Supreme Court, U.S.
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No. 96

IN THE

Supreme Court of the United States

October Term, 1996

WORD OF FAITH WORLD OUTREACH CENTER CHURCH, *ET AL.*,

PETITIONERS,

VS.

DIANE SAWYER, CAPITAL CITIES/ABC INC., *ET AL.*,

RESPONDENTS,

ON PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI

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39 pp

QUESTIONS PRESENTED

I.

WHETHER THE COVERAGE OF THE CIVIL RIGHTS ACT OF 1871, 42 U.S.C. §1985(3) IS LIMITED SOLELY TO CASES INOLVING *RACIAL* BIAS OR WHETHER THE STATUTE REACHES CONSPIRACIES, SUCH AS THE ONE HERE, SPECIFICALLY INTENDED TO SHUT DOWN A CHURCH AND ITS MINISTRIES WITH THE AID OF STATE OFFICIALS BECAUSE OF *RELIGIOUS* BIGOTRY?

II.

WHETHER, AS HELD BY THE COURT OF APPEALS, PREDICATE ACTS OF RACKETEERING ACTIVITY—NO MATTER HOW MANY, OF WHAT CHARACTER, OR EXTENDING OVER WHAT PERIOD OF TIME—MAY FORM A "PATTERN OF RACKETEERING ACTIVITY" ONLY WHEN THEY ARE PART OF SEPARATE ILLEGAL SCHEMES?

LIST OF PARTIES

Pursuant to Rule 24.1(b) the following listed persons or entities have an interest in the outcome of this case.

Plaintiffs-Petitioners:

Word of Faith World Outreach Center Church, Inc., a dissolved corporation on behalf of its members

Word of Faith World Outreach Center Church, an unincorporated Church on behalf of its members

Respondents:

Diane Sawyer

Robbie Gordon

Kelly Sutherland

Jeff Cooke

Capital Cities/ABC Inc.

American Broadcasting Companies, Inc.

ABC News, Inc.

The Trinity Foundation, Inc.

Ole Anthony

Harry Guetzlaff

Powell Holloway

Bank Doe Defendants (one or more unknown John/Jane Doe employees of Commercial Bank & Trust Co., Tulsa, Oklahoma)

IDM Doe Defendants (one or more unknown John/Jane Doe employees of Internal Data Management, Tulsa, Oklahoma)

Church Doe Defendants (one or more unknown John/Jane Doe employees of Petitioners)

Joyce-Pollard Doe Defendants (one or more unknown John/Jane Doe employees of Joyce and Pollard, Tulsa, Oklahoma)

Counsel for Petitioners:

John L. Ross, Rhonda Johnson Byrd, Thompson, Coe, Cousins & Irons, L.L.P., Dallas, Texas

J.C. Joyce, Joyce and Pollard, Tulsa, Oklahoma

Counsel for Respondents:

Floyd Abrams, Susan Buckley, Edward P. Krugman, and David G. Januszewski, Cahill Gordon & Reindel, New York, New York (counsel for Sawyer, Capital Cities/ABC, Inc., American Broadcasting Companies, Inc., ABC News, Gordon, Sutherland, and Cooke)

Frank Charles Veccella and Annabel Lugo Hoffman, Jackson & Walker, L.L.P., Dallas, Texas (counsel for Sawyer, Capital Cities/ABC, Inc., American Broadcasting Companies, Inc., ABC News, Gordon, Sutherland, and Cooke)

Richard A. Rohan, Barbara M.G. Lynn, and Sally A. Longroy, Carrington, Coleman, Sloman & Blumenthal, L.L.P., Dallas, Texas (counsel for Trinity Foundation, Inc., Anthony, Guetzlaff, and Holloway)

Others:[1]

A.H. Belo Corp.

WFAA-TV, Inc.

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[1]These persons and entities were named as original defendants in the district court. They were later dropped as parties, were not parties to the appeal to the Fifth Circuit, and are not Respondents before this Court.

Bill Brown

Ed Housewright

Steve Blow

Ed Bark

Paul C. Watler, Robert E. Davis, Charles A Gall, Steven E. Fox, and Michael Stewart, Jenkens & Gilchrist, Dallas, Texas, counsel for A.H. Belo Corp., WFAA-TV, Inc., Bill Brown, Ed Housewright, Steve Blow, and Ed Bark.

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I.

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OPINIONS BELOW

The opinion of the district court is unreported, but is reproduced in the *Appendix To Petition For Certiorari* ("*Appendix*"), pp. 17a-22a.[2] The decision of the U.S. Court of Appeals for the Fifth Circuit, *Word of Faith World Outreach Center Church, Inc. v. Sawyer*, 90 F.3rd 118 (5th Cir. 1996), is also reproduced in the *Appendix*, pp. 1a-15a. The Fifth Circuit's decision was issued on August 7, 1996.

JURISDICTION

Under 28 U.S.C. §1254(1), the Court has discretionary jurisdiction to review the decision of the Fifth Circuit by a writ of *certiorari*.

STATUTES INVOLVED

The statutes involved, 42 U.S.C. §1985, and 18 U.S.C. §§1961, *et seq.*, are set forth in the *Appendix*, pp. 23a-26a.

STATEMENT OF THE CASE

A. INTRODUCTION:

This case presents the Court with the opportunity not only to correct the erroneous decisions of the district court and Fifth Circuit, but also to definitively answer substantial lingering and long-standing questions about the scope of two different important federal statutes—the 1871 CIVIL RIGHTS ACT and RICO—and to resolve splits in the circuits concerning those questions. Further, because Petitioners' claims were dismissed under Rule 12(b)(6), *Fed. R. Civ. P.*, there are no factual issues in which the Court need immerse itself, but purely questions of federal law concerning the meaning of these two statutes.[3]

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[2]References to the *Appendix* will be to specific pages therein, *e.g.*, "App. p. 34a."

[3]*See, e.g., Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984) (the court must accept facts alleged in the complaint as true, and view them in the light ***footnote continued on next page . . . .***

This case was filed on November 11, 1993, by Petitioners (hereafter, "the Church") on behalf of their members for injuries suffered as a result of a religiously motivated conspiracy by Respondents to shut down the Church and its television ministry with the aid of state officials. Using knowingly false accusations and "evidence" manufactured by Respondents, Respondents sought to entice state officials to indict members of the Church, and successfully induced state officials to violate the constitutionally protected First Amendment rights of the Church, its pastor, and Church members to the free exercise of religion. *See Word of Faith World Outreach Center Church v. Morales*, 787 F.Supp. 689, 691 and 698-702 (W.D. Tex. 1992) (specifically finding investigation of the Church by the Texas Attorney General—an investigation instigated by Respondents—violated First Amendment rights of Church members), *reversed on other grounds*, 986 F.2nd 962 (5th Cir. 1993).[4] *See also Tilton v. Marshall*, 925 S.W.2nd 672 (Tex. 1996, *orig. proceeding*) (*mandamus* granted to bar trial judge from compensating plaintiffs for allegedly unanswered prayers, and to overturn order to produce tithing records); *Tilton v. Moyé*, 869 S.W.2nd 955 (Tex. 1994, *orig. proceeding*) (*mandamus* granted to overturn trial court's order, in violation of First Amendment, to produce Church membership information). Respondents were also successful in closing down the Church's television ministry, resulting in the loss of employment and in personal financial hardship for approximately 800 Church employees and their families, and in significantly reducing the Church's membership and outreach ministries. *See Word of Faith*, 90 F.3rd at 121; App. pp. 31a, 151a, and 181a.

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most favorable to the plaintiff); *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957) (district court must deny motion to dismiss "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.").

[4]The Church expressly alleged this investigation—and others—were instigated by Respondents in furtherance of their conspiracy. *See e.g.*, App. pp. 213a-216a, 226a (¶32), and 239a-248a.

To achieve their goals of shutting down the Church and its ministries, over the course of more than two years, Respondents engaged in multiple unlawful acts and RICO predicate acts, culminating in three nationally televised broadcasts of *PrimeTime Live* between November, 1991,[5] and July, 1992, containing numerous knowingly and maliciously false, fraudulent, and misleading statements concerning the Church, its pastor, and its ministries.

On March 18, 1994, the district court granted Respondents' motions to dismiss the civil rights claim on the ground §1985 does not proscribe conspiracies motivated by *religious* animus. On February 8, 1995, the district court also dismissed the RICO claim on the ground the Church had not sufficiently alleged a "pattern of racketeering activity."

On August 7, 1996, the Fifth Circuit affirmed dismissal of the §1985 claim, stating, without explanation: "We decline the Church's invitation to extend the reach of section 1985(3) to include conspiracies motivated by religious, as opposed, to racial animus." 90 F.3rd at 124. The court also affirmed dismissal of the RICO claims for failure to sufficiently allege a "pattern of racketeering activity," expressly conceding, however, that "[t]he law in other circuits might have allowed this case to proceed further." 90 F.3rd at 123 n. 4.

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[5]Television ratings "sweeps" month.

B. THE RELEVANT FACTS:[6]

1. The Parties:

a. The Church:[7]

The Church is a Christian church based in Farmers Branch, Texas, a Dallas suburb, with a membership—before Respondents' illegal conduct—numbering in the thousands. *See Word of Faith World Outreach Ctr. Church v. Morales*, 986 F.2nd at 963 (12-13,000 members; 500,000 on mailing list at the time of the events).[8] At the time of the events giving rise to this lawsuit, the Church had approximately 8,000 members in the Dallas area, with average Sunday worship attendance of 3,000-5,000. The Church also reached hundreds of thousands of followers through its nationally broadcast television ministry. The Church's pastor was, and remains, Reverend Robert Tilton.

One of the central beliefs of the Church and its members is the importance and necessity of tithing and making vows to God through the Church. Among other things, the Church teaches and its members believe financial support is required by the Bible and must be freely given. The Church and its members believe the expressions of faith and trust as manifested by financial vows to God, through the Church, are rewarded, and the faithful will prosper physically, spiritually,

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[6]Because the Church's claims were dismissed under Rule 12(b)(6), *Fed. R. Civ. P.*, the statement of facts is a summary taken from the Church's pleadings and its RICO case statement, filed with the district court at the court's direction. For a detailed statement of the facts, *see Plaintiffs' Third Amended Complaint* (App. pp. 29a-130a), *Plaintiffs' Second Amended RICO Case Statement* (App. pp. 131a-217a), and *Plaintiffs' Original Complaint* (App. pp. 220a-253a).

[7]*See* App. pp. 152a-154a.

[8]When the events giving rise to this lawsuit began, Petitioners' legal form of organization was Word of Faith World Outreach Center Church, Inc., a Texas non-profit corporation. That entity later transferred all its assets to Word of Faith World Outreach Center Church, an unincorporated Church, and then dissolved. Word of Faith World Outreach Center Church, Inc., is authorized to maintain this action, notwithstanding its dissolution, under art. 1396-7.12(A)(1) and (2), TEX. CORP. ACT. For ease of reference, both entities are collectively referred to as "the Church."

and financially. The class of churches subscribing to this interpretation of the Holy Scriptures is often referred to as "prosperity" churches. The Church and its members believe God answers prayers and God wants all His people to prosper spiritually, physically and financially.[9]

b. The Trinity Respondents:[10]

Ole Anthony is the founder, President, and member of the Board of Directors of the Trinity Foundation, Inc. ("Trinity Foundation"). The Trinity Foundation, a Texas non-profit corporation, purports to have been formed for the purpose of "designing, producing, presenting, operating, and supporting Christ-centered communications projects." In fact, Anthony is a man fueled by two burning passions: religious bigotry towards the Church and its television ministry, and a deep desire for personal promotion through use of the media. The Trinity Foundation serves as his vehicle to achieve both objectives. *See* App. pp. 38a-45a and 154a-161a.[11]

By his own admission, Anthony has waged a "holy war" against Reverend Tilton, accusing Reverend Tilton in testimony before the House Ways and Means Committee of "franchising" his ministry and operating a "heavenly lottery." In denunciation of television ministries generally—and Reverend Tilton specifically—Anthony has regularly appeared on talk radio and tabloid television, *e.g.*, *Current Affair, Inside Edition, Entertainment Tonight, The Maury Povich Show*, and through the Trinity Foundation has held numerous press conferences and given countless interviews to print media to vent his invective against the Church and its

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[9]The Attorney General of Texas has acknowledged that the Church constitutes a *bona fide* Church, and that its religious beliefs are sincerely held. *See Word of Faith World Outreach Center Church, Inc. v. Morales*, 986 F.2nd at 963, n. 1. The Church holds a non-profit tax exempt status under § 501(c)(3) of the INTERNAL REVENUE CODE.

[10]*See* App. pp. 37a-48a and 154a-161a.

[11]Respondents Harry Guetzlaff and Powell Holloway were employees, board members, or directors of the Trinity Foundation. Collectively, the Trinity Foundation, Anthony, Guetzlaff, and Holloway are referred to as "the Trinity Respondents."

ministry. In simple terms, for years, Anthony's aim has been to shut down the Church and its ministry. *See National Organization for Women, Inc., v. Scheidler*, 510 U.S. 249, 127 L.Ed.2nd 99, 108-111 (1994) (motive to shut down abortion clinics is sufficient motive to support RICO claims; economic motive not required). In his discussions with Respondent Diane Sawyer, Anthony accused the Church of "blasphemy,"[12] and in describing the goal of his unholy alliance with the ABC Respondents, Anthony stated (App. pp. 41a, 157a, and 227a):

> My prediction is that Word of Faith won't be around in four years, and the land where the church once stood will be a parking lot. . . . It'll be covered with cracks with weeds growing through them, and birds of flight will nest in the remains of the building.

ABC itself recognized Anthony's religious prejudice against the Church, with one of ABC's producers writing in her notes that Anthony was on a "crusade" against Reverend Tilton "in the name of Christ." App. pp. 41a, 158a, and 162a.[13]

c. The ABC Respondents:[14]

Diane Sawyer was the anchor of the three *PrimeTime Live* broadcasts. Gordon and Sutherland, were the producers, and Cooke the cameraman. The corporate ABC defendants were the entities which funded the activities of Sawyer, Gordon, Sutherland, Cooke, the Trinity Respondents, and the Doe Defendants,[15] produced the broadcasts, and by whom the individual ABC Respondents were employed. The individual

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[12]App. pp. 40a and 157a.

[13]Anthony's motivations were not entirely theological, however. He also hoped to use his "crusade" against the Church and his association with the ABC Respondents to propel himself into a job as host of a syndicated radio talk show. App. pp. 41a-42a and 158a-160a.

[14]*See* App. pp. 48a-57a and 161a-162a.

[15]As described in more detail in the pleadings and the RICO case statement, in the course of their activities Respondents enlisted the aid of a number of presently unidentified John or Jane Does. *See* App. pp. 57a-64a and 162a-163a.

ABC Respondents shared Anthony's goal of shutting down the Church. For example, Sawyer stated she "was appalled" when she saw Reverend Tilton on TV, and vowed "He needs to be stopped." App. pp. 48a and 161a. Likewise, out-takes from "undercover" video tapes made by Cooke and Gordon in the Church sanctuary during Sunday morning worship captured the pair's disdain for the Church and its tenets, evidenced by their repeated derogatory, vulgar and obscene language, and their discussions of sexual prowess and sexual response. App. pp. 50a-52a, 73a, and 161a-162a. *See also* App. p. 228a.

2. The §1985(3) Conspiracy, and the RICO Pattern of Racketeering Activity:

In pursuit of his crusade against the Church, for years Anthony had unsuccessfully sought indictments against Church officials.[16] Beginning at least as early as May, 1991, Anthony conspired with the other Respondents to finally achieve his objective through numerous RICO predicate and other unlawful acts. Respondents knowingly manufactured false evidence and allegations of fraud and deceit by the Church, used the manufactured "evidence" to further induce and encourage state, local and federal officials to investigate the Church, indict Church officials—including Reverend Tilton—revoke the Church's property tax exemptions, and revoke the Church's tax exempt status, and then on three separate occasions broadcast their knowingly false allegations to a national television audience.[17]

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[16]In a taped out-take, Anthony told Sawyer: "I'm the incoming president of the Texas Grand Jury Association, and I've served on many grand juries, and *we have tried several . . . three or four different instances to get an indictment*, and it's obvious—because it's commercial fraud—but always the DA is without courage or something takes place where they won't proceed that final step, that little oomph! Well, this program can be the little oomph! that would cause a whole lot of these charlatans to be investigated." App. pp. 40a and 156a (emphasis added).

[17]Respondents instigated investigations of the Church by, *e.g.*, the Dallas County District Attorney's Office, the Dallas County Central Appraisal District, the Texas Attorney General's Office, the U.S. Postal Service, the FBI, and the IRS. App. pp. 88a-89a. Despite probing investigations by these agencies, not ***footnote continued on next page . . . .***

The ABC Respondents *knew* the allegations of fraud and corruption presented to state, local, and federal officials and broadcast to the nation were false.[18] Handwritten notes made before the broadcasts—believed to have been authored by Sutherland—stated: *"No fraud to be had on this guy[19]—can have fun w/ him though."* App. pp. 32a, 116a, 150a, 190a, and 259a (copy of the actual notes).

In carrying out their objectives, Respondents' unlawful acts and RICO predicate acts included, *inter alia*:[20]

- obtaining—perhaps through bribery—the cooperation of one or more employees of a federally insured bank that processed Church donations to steal numerous items of mail, donations, and other property directed to the Church, but in possession of the bank, and falsifying bank records to conceal the multiple thefts;[21]
- obtaining—perhaps through bribery—the cooperation of one or more employees of the data processing firm that maintained Church records concerning membership, mailings, and donations to steal one or more computer disks containing confidential and constitutionally protected[22] Church membership information;[23]

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one criminal charge or complaint has been filed against the Church, its pastor, or any of its employees relating to the matters alleged in the broadcasts. App. p. 151a.

[18]Knowledge of falsity and malice were specifically alleged. *See, e.g.*, App. pp. 32a (¶¶4-5), 70a (¶1(a)), 73a (¶1(b)), 121a (¶19(c)), and 124a (¶5(c)).

[19]Reverend Tilton.

[20]*See generally* App. pp. 91a-128a and 182a-196a.

[21]BANK FRAUD, 18 U.S.C. §§1344 and 1346 (defrauding federally insured bank of the loyal services of employees); MAIL FRAUD, 18 U.S.C. §1341 (unlawfully taking mail matter from the mail). App. pp. 57a-59a, 95a-96a, 183a, 196a-197a, and 231a (¶38).

[22]*See, e.g., Buckley v. Valeo*, 424 U.S. 1 (1976) (identity of financial contributors constitutionally protected); *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539 (1963) (identity of members); *Bates v.*
footnote continued on next page . . . .

- transporting the stolen computer disk(s) from Oklahoma to New York,[24] where Gordon paid to have the disk(s) decoded;[25]
- stealing from the offices of the Church's lawyers, Joyce & Pollard, confidential telephone logs of privileged attorney-client communications;[26]
- in violation of federal wiretap laws, surreptitiously recording portions of confidential phone conversations between Church prayer ministers and persons making prayer requests, and then stealing some of the prayer requests;[27]
- enlisting—perhaps through bribery—the cooperation of one or more Church employees to steal mail directed to the Church and other Church property,[28] and transporting the stolen property in interstate commerce;[29]
- filing false affidavits of Anthony, Guetzlaff, and Holloway with a federal district court;[30]

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footnote continued from previous page . . . .
City of Little Rock, 361 U.S. 516 (1960) (same); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958) (same).

[23]App. pp. 60a-62a, 70a-71a, 175a, and 196a-198a.

[24]INTERSTATE TRANSPORTATION OF STOLEN GOODS, 18 U.S.C. §2314; RECEIPT OF PROPERTY STOLEN FROM INTERSTATE COMMERCE, 18 U.S.C. §2315. App. pp. 104a-107a and 186a.

[25]App. p. 260a (copy of the invoice from the data processing service, and Gordon's personal check in payment of the invoice). Neither the disk nor the data have ever been returned to the Church.

[26]App. pp. 63a-64a, 88a, 175a, and 198a.

[27]App. pp. 87a-88a, 108a-109a, and 174a-175a.

[28]App. pp. 61a-62a, 173a-174a, and 197a-198a.

[29]INTERSTATE TRANSPORTATION OF STOLEN GOODS, 18 U.S.C. §2314; RECEIPT OF PROPERTY STOLEN FROM INTERSTATE COMMERCE, 18 U.S.C. §2315. App. pp. 124a-126a and 194a.

[30]OBSTRUCTION OF JUSTICE, 18 U.S.C. §1503. App. pp. 127a-128a, 164a-166a, and 195a-196a.

- numerous other mail and wire frauds.[31]

3. Proceedings Below:

On November 11, 1993, the Church filed suit on the civil rights violations. App. pp. 220a-258a. While Respondents' motions to dismiss that claim were pending, and following this Court's January, 1994, decision in *National Organization for Women, Inc. v. Scheidler*, *supra*, the Church filed a *First Amended Complaint* adding the RICO claim.

On March 18, 1994, the district court dismissed the civil rights claim, holding that conspiracies based on religious animus did not fall within the prohibition of §1985(3). Almost a year later, the district court dismissed the RICO claims contained in the Church's *Third Amended Complaint*, on the ground the Church had failed to allege a "pattern of racketeering activity." App. pp. 19a-21a.[32]

The Fifth Circuit affirmed. Concerning the Civil Rights Act claim, without any explanation whatsoever, the Fifth Circuit simply stated: "We decline the Church's invitation to extend the reach of section 1985(3) to include conspiracies motivated by religious, as opposed, to racial animus." 90 F.3rd at 124.

Concerning the RICO claim, the court held that the Church failed to plead a "pattern of racketeering activity." Specifically, while acknowledging this Court's decision in

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[31]App. pp. 91a-95a and 109a-126a.

[32]The §1985(3) claim is omitted from the *Third Amended Complaint* because—over the Church's objections—the district court would not allow that claim even to remain in the Church's pleadings after it had been dismissed, *citing Wilson v. First Houston Investment Corp.*, 566 F.2nd 1235, 1238 (5th Cir. 1978) ("[W]e hold that plaintiff, by filing an amended complaint after a dismissal with leave to amend, was not barred from raising on appeal the correctness of the dismissal order."), *vacated on other grounds*, 444 U.S. 559 (1979). The Church sought to keep the civil rights claim in its amended pleadings solely to insure that dismissal of the civil rights claim was preserved for appellate review. *See Loux v. Rhay*, 375 F.2nd 55, 57 (9th Cir. 1967) ("By filing an amended complaint, plaintiff waives any error in the ruling to [dismiss] the original complaint.").

H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229 (1989), the court stated (90 F.3rd at 123):

> It is unnecessary to delve into the arcane concepts of closed-end or open-ended continuity under RICO. [Three prior decisions of the Fifth Circuit][33] make clear that where alleged RICO predicate acts are part and parcel of a single, otherwise lawful transaction, a "pattern of racketeering activity" has not been shown.[34] In this case, the alleged predicate acts occurred during the production and airing of *PrimeTime* broadcasts concerning Tilton and his Church. The alleged acts were all part of a single, lawful endeavor—namely the production of television news reports concerning a particular subject. We agree with the district court that the Church has failed to plead a "continuity of racketeering activity, or its threat." *H.J., Inc.*, 492 U.S. at 241, 109 S.Ct. at 2902.

Citing conflicting cases from the Sixth, Seventh, and Ninth circuits, the court of appeals conceded, however (90 F.3rd at 123 n. 4):

> [t]he law in other circuits might have allowed this case to proceed further. . . . The precedents of this circuit concerning continuity are consistently different from these cases.

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[33] *In re Burzynski*, 989 F.2nd 733 (5th Cir. 1993); *Calcasieu Marine Nat'l Bank v. Grant*, 943 F.2nd 1453 (5th Cir. 1991); *Delta Truck & Tractor, Inc. v. J.I. Case Co.*, 855 F.2nd 241 (5th Cir. 1988), *cert. denied*, 489 U.S. 1079 (1989).

[34] Ironically, in *Delta Truck*, the court specifically assumed a "pattern of racketeering activity" *was* sufficiently alleged. 855 F.2nd at 243

REASONS FOR GRANTING THE WRIT

I.

CERTIORARI SHOULD BE GRANTED BECAUSE THE COURT OF APPEALS' DECISION IS CONTRARY BOTH TO THIS COURT'S PRIOR DECISIONS AND THE LEGISLATIVE HISTORY OF §1985(3), AND CREATES AN UNWARRANTED SPLIT IN THE CIRCUITS CONCERNING THE SCOPE OF AN IMPORTANT CIVIL RIGHTS STATUTE.

A. THE COURT OF APPEALS' POSITION THAT §1985(3) IS LIMITED SOLELY TO *RACIALLY*-BASED CONSPIRACIES IS CONTRARY TO PRIOR DECISIONS OF THIS COURT.

Section 1985(3) requires the intent of the illegal conspiracy be to deprive "any person or class of persons of the *equal* protection of the laws, or of *equal* privileges and immunities under the laws." This Court has held that §1985(3) is *not* limited to racially motivated conspiracies. Rather §1985(3) requires only "that there must be some racial, *or perhaps otherwise class-based, invidiously discriminatory animus* behind the conspirators' actions." *Griffin v. Breckenridge*, 403 U.S. 89, 102 (1971) (emphasis added). *Griffin* found that requirement satisfied by allegations the conspirators had stopped plaintiffs on the highway, prevented their travel, and beat them because of their race, without defining the outer reaches of the statute.

Twice, since *Griffin*, this Court has had the opportunity to define the scope of other-than-race class-based invidious discriminatory intent that would be encompassed within §1985(3). *See Bray v. Alexandria Women's Health Clinic*, 505 U.S. 263 (1993); *United Brotherhood of Carpenters and Joiners, Local 610 v. Scott*, 463 U.S. 825, 828-29 (1983). In each case, the Court found the "class" to which the plaintiffs purported to belong did not constitute the sort of other-than-racial class encompassed by §1985(3). In *Carpenters*, the Court held that "conspiracies motivated by bias towards

others on account of their *economic* view, status, or activities[,]" were not within the reach of §1985(3) (emphasis original). In *Bray*, the Court held that, "'[w]omen seeking abortions' is not a qualifying class." 122 L.Ed.2nd at 46.

The Court has never, however, rejected or retreated from its original interpretation in *Griffin* that §1985(3) encompasses other-than-race class-based conspiracies. Rather, the Court merely held on the facts in *Carpenters* and *Bray*, the "classes" there presented were not the sort protected by §1985(3). Indeed, in *Bray*, the Court expressly refused to reach the question whether "women in general" constituted a qualifying class under § 1985(3). 122 L.Ed.2nd at 46.

Likewise, the Court has never rejected the views of Justices O'Connor, Stevens, and Blackmun that §1985(3) is not limited to race-based conspiracies, and clearly prohibits conspiracies based on *religious* animus. *See Bray*, 122 L.Ed.2nd at 78 (Stevens, J., dissenting: "The question left open in *Griffin*—whether the coverage of §1985(3) is limited to cases involving racial bias—is easily answered. The text of the statute provides no basis for excluding from its coverage any cognizible class of persons who are entitled to the equal protection of the laws."); *Carpenters*, 463 U.S. at 853 (O'Connor, J., dissenting; emphasis added: "[C]ertain class traits, such as race, *religion*, sex, and national origin, *per se* meet [§1985(3)'s] requirement . . ." emphasis added).

B. The Court Of Appeals' Decision Is Contrary To The Clear Legislative History Of The Statute.

Griffin, *Carpenters*, and *Bray* each made specific reference to the oft-quoted remarks of Senator Edmunds—Senate floor manager of the legislation—in suggesting the sorts of other-than-race class-based animus §1985(3) might reach. *Griffin v. Breckenridge*, 403 U.S. at 102 n. 9; *Carpenters*, 463 U.S. at 836-37; *Bray*, 122 L.Ed.2nd at 63 (Souter, J., concurring) and 96 (O'Connor, J., dissenting). In those oft-quoted remarks, Senator Edmunds stated [*see, e.g., Taylor v. Gilmartin*, 686 F.2nd 1346, 1357 (10th Cir. 1982), *cert. denied*, 459 U.S. 1147 (1983) (emphasis added)]:

> We do not undertake in this bill to interfere with what might be called a private conspiracy growing out of a neighborhood feud or one man or set of men against another to prevent one getting an indictment in the State courts against men for burning down his barn; but, if in a case like this, it should appear that this conspiracy was formed against this man because he was a Democrat, if you please ***or because he was a Catholic, or because he was a Methodist,*** or because he was a Vermonter, . . . then this section could reach it.

"Such language clearly encompasses an 'irrational and odious class discrimination based on national origin or religion.'" *Taylor v. Gilmartin*, 686 F.2nd at 1357, *quoting*, *Arnold v. Tiffany*, 359 F.Supp. 1034, 1036 (C..D. Cal.), *aff'd on other grounds*, 487 F.2nd 216, 218 (9th Cir. 1973), *cert. denied*, 415 U.S. 984 (1974).[35]

C. The Position Of The Court Of Appeals Is Contrary To That Adopted By Every Other Circuit That Has Addressed The Issue, Thereby Creating A Split In The Circuits.

Cases in the Second, Fourth, Sixth, Eighth, Tenth, and District of Columbia Circuits have each interpreted §1985(3) to reach conspiracies based on religious bigotry. For circuit court decisions, *see LeBlanc-Sternberg v. Fletcher*, 67 F.3rd 412, 426-27 (2nd Cir. 1995) (involving claims by Orthodox Jews; "[Section 1985(3)] is applicable only if the plaintiff can show that 'some racial, or perhaps otherwise class-based, invidiously discriminatory animus [lay] behind the conspirators' actions.' . . proor that the defendants' impetus was the plaintiffs' religion suffices."), *affirming* 781 F.Supp. 261, 269 (S.D. N.Y. 1991) ("[R]eligious-based discrimination is clearly within the ambit of this particular statute."); *Jews for Jesus v. Jewish Comm. Rel. Council of N.Y.*, 968 F.2nd 286, 291 (2nd Cir. 1992) ("Several courts, including this one, have

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[35]It is also worth noting that the legislation that became what is now §1985(3) was known as the Ku Klux Klan Act. The Klan's bigotry and prejudice against religious groups in addition to Blacks—particularly Jews and Catholics—is well-documented historical fact.

defined 'class-based animus' to include discrimination based on religion."); *Colombrito v. Kelly*, 764 F.2nd 122, 130-31 (2nd Cir. 1985) (membership in the Unification Church); *Taylor v. Gilmartin*, 686 F.2nd at 1357-58 (10th Cir.; membership in "the Old Catholic Church");[36] *Ward v. Connor*, 657 F.2nd 45, 48 (4th Cir. 1981), *cert. denied*, 455 U.S. 907 (1982) (membership in the Unification Church); *Marlowe v. Fisher Body*, 489 F.2nd 1057 (6th Cir. 1973) (§1985(3) action by Jewish employee against employer for discrimination on the basis of religion); *Action v. Gannon*, 450 F.2nd 1227 (8th Cir. 1971) (§1985(3) action allowed by church members against protesters for violation of freedom of assembly and worship). For district court opinions, *see Emanuel v. Barry*, 724 F.Supp. 1096, 1100-1101 (E.D. N.Y. 1989) ("[T]his Court concludes that anti-Semitic animus is actionable under section 1985(3)."); *St. Agnes Hospital of Baltimore, Inc. v. Riddick*, 668 F.Supp. 478, 482-83 (D. Md. 1987) (Roman Catholic hospital); *Eilers v. Coy*, 582 F.Supp. 1093, 1099-1100 (D. Minn. 1984) (Disciples of the Lord Jesus Christ); *Rankin v. Howard*, 527 F.Supp. 976, 977 (D. Ariz. 1981) ("The statute affords protection to one who has suffered injuries motivated by invidiously discriminatory animus toward members of a religious group."); *Cooper v. Molko*, 512 F.Supp. 563, 568-71 (N.D. Cal. 1981); *Arnold v. Tiffany*, 359 F.Supp. at 1036 (§1985(3) includes discrimination based on national origin or religion); *Mandelkorn v. Patrick*, 359 F.Supp. 692, 697-98 (D. D.C. 1973) (Children of God); *Central Presbyterian Church v. Black Liberation Front*, 303 F.Supp. 894, 899-900 (E.D. Mo. 1969) (conspiracy to deprive members of Central Presbyterian Church of right to freedom of worship actionable under §1985(3)).

The Fifth Circuit in this case stands alone in opposition to this weight of authority, excluding religious groups from the protection of §1985(3) and limiting the statute to race-based

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[36]Another panel of the Tenth Circuit later questioned *Taylor v. Gilmartin*, but did so on grounds that a conspiracy to influence state officials, even if motivated by religious animus, was not within the scope of §1985(3). *See Tilton v. Richardson*, 6 F.3rd 683 (10th Cir. 1993), *cert. denied*, 127 L.Ed.2nd 218 (1994).

conspiracies. *See, e.g., Green v. State Bar of Texas*, 27 F.3rd 1083, 1088 n. 8 (5th Cir. 1994) (racial animus is essential element of §1985(3) claim). Ironically, nearly a decade ago, the Fifth Circuit acknowledged this weight of authority, but expressly reserved ruling on the question whether §1985(3) reached religiously-based conspiracies. *See Roe v. Abortion Abolition Society*, 811 F.2nd 931, 934 (5th Cir.), *cert. denied*, 484 U.S. 848 (1987) ("The circuit courts of appeal have consistently held that religious ill-will is one of the class-based biases covered by §1985(3)."). Likewise, in *Burns-Toole v. Byrne*, 11 F.3rd 1270, 1275-76 (5th Cir.), *cert denied*, 129 L.Ed.2nd 814 (1994) the Fifth Circuit refused to decide whether §1985(3) applied to religious discrimination. Squarely presented with the issue in this case, the Fifth Circuit panel here offered no explanation whatsoever for rejecting this Court's decisions in *Griffin*, *Carpenters*, and *Bray*, the legislative history of the statute, and the compelling weight of authority from the other circuits.

D. Granting The Writ Would Provide The Court With The Opportunity To Settle An Unresolved Question Concerning The Scope Of This Important Civil Rights Statute.

Griffin, a case involving black plaintiffs, did not require the Court to define the precise scope of class-based invidious discriminatory conspiracies prohibited by §1985(3). *Id.*, n. 9:

> We need not decide, given the facts of this case, whether a conspiracy motivated by invidiously discriminatory intent other than racial bias would be actionable under the portion of §1985(3) before us. *Cf. Cong. Globe*, 42nd Cong., 1st Sess. 567 (1981) (remarks of Senator Edmunds).

In *Carpenters* and *Bray*, the Court limited its decisions to the facts and the nature of the "classes" presented in those cases, once again reserving ruling on the precise scope of the statute. *See also Burns-Toole v. Byrne*, 11 F.3rd at 1275-76, n. 25 ("There is little doubt that the reach of §1985 poses an interesting question" *citing Griffin*. "Subsequent decisions [*Carpenters* and *Bray*] have refused to delineate [§1985's] outside boundaries."); *Harrison v. KVAT Food Mgmt., Inc.*,

766 F.2nd 155, 157-59 (4th Cir. 1985) (acknowledging "considerable controversy" over scope of §1985(3), and listing the conflicting cases). This case precisely presents the Court with the opportunity to definitively answer the question whether religion is a protected class under §1985, and to prevent the split in the circuits created by the Fifth Circuit's opinion in this case. At a time when church burnings have become a pressing national concern, the Court should not hesitate to clearly answer "yes" to that question.[37]

II.

CERTIORARI SHOULD BE GRANTED TO REAFFIRM *H.J., INC.*, AS THE APPROPRIATE TEST FOR DETERMINING THE EXISTENCE OF A RICO "PATTERN OF RACKETEERING ACTIVITY," PREVENT THE REEMERGENCE OF MULTIPLE INCONSISTENT STANDARDS, AND INSURE EQUAL TREATMENT OF RICO PLAINTIFFS AND DEFENDANTS.

On four different occasions this Court has flatly rejected suggestions to impose artificial judicial restrictions on the plain, sweeping language of the RICO statute. *See National Organization for Women, Inc. v. Scheidler*, *supra* (RICO

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[37]In addition to class-based discriminatory animus, §1985(3) also requires *either* that: (1) the conspiracy be "aimed" at a right that is subject to private, as well as official encroachment; *or* (2) the state is involved in the conspiracy; *or* (3) "that the aim of the conspiracy is to influence the activity of the State." *Carpenters*, 463 U.S. at 830. *See also* §1985(3) ("If two or more persons . . . for the purpose of depriving, either directly *or indirectly* . . . ." [emphasis added]). This requirement is satisfied in this case because one of the goals of the conspiracy was to influence state officials to take action against the Church in violation of Church members' First Amendment rights, and to secure indictments of Church officials based on evidence manufactured by Respondents as part of the conspiracy, which was known to be false. *See* App. pp. 72a (¶III(C)(1)(g)), 213a-216a, 226a (¶32), 228a (¶34), 230a-231a (¶37), and 239a-248a. *But see Tilton v. Richardson*, *supra*. As noted previously, Respondents were partially successful in their goal. *See Word of Faith World Outreach Center Church v. Morales*, *supra*.

does not require any "economic" motivation); *H.J. Inc. v. Northwestern Bell Tel. Co.*, *supra* ("pattern of racketeering activity" does not require multiple schemes); *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479 (1985) (civil RICO does not require prior criminal conviction of perpetrators or proof of "racketeering injury" in addition to injuries flowing from commission of predicate acts); *United States v. Turkette*, 452 U.S. 576 (1981) (RICO is not limited to "legitimate" enterprises, but reaches "illegitimate" ones as well). Ignoring its own admonition that courts should be "reluctant to inject another judicial construct into a statute that we [have been] commanded to construe broadly[,]"[38] the Fifth Circuit, nevertheless, imposed yet another artificial, judicial limitation on the scope of RICO that finds no support in prior decisions of this Court or the text of the statute, and which revives limitations previously rejected by this Court.

A. THE COURT OF APPEALS ERRONEOUSLY SUBSTITUTED A "PATTERN" DEFINITION THAT IS AT ODDS WITH *H.J., INC.*, AND THAT RESURRECTS JUDICIAL LIMITATIONS ON RICO PREVIOUSLY REJECTED BY THIS COURT.

The Court granted *certiorari* in *H.J., Inc.*, precisely to resolve the conflict in the circuits, the "plethora of different views" concerning RICO's "pattern" requirement, and develop a "meaningful concept" of "pattern of racketeering activity." 492 U.S. at 235-36. Rejecting both the restrictive "multiple schemes" interpretation and the liberal "two-related-predicate-acts-is-sufficient" approach to the "pattern" requirement, this Court defined the proper test for determining whether RICO predicate acts constitute a "pattern" (492 U.S. at 239-242; emphasis original):

> [T]o prove a pattern of racketeering activity a plaintiff or prosecutor must show that the racketeering

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[38] *Armco Indust. Credit Corp. v. SLT Warehouse Co.*, 782 F.2nd 475, 481-82 (5th Cir. 1986).

> predicates are related, [39] *and* that they amount to or pose a threat of continued criminal activity. . . .
>
> . . . What a plaintiff or prosecutor must prove is continuity of racketeering activity, or its threat, *simpliciter*. . . .
>
> "Continuity" is both a closed- and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition. . . . A party alleging a RICO violation may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time. Predicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy this requirement . . . . Often a RICO action will be brought before continuity can be established in this way. In such cases, liability depends on whether the *threat* of continuity is demonstrated.

Characterizing the *H.J., Inc.*, open-ended/closed-ended test as "arcane," the court of appeals simply refused to apply it. Rather, the court adopted its own inventive standard, holding that admittedly "related" predicate acts—no matter how many, of what character, or extending over what period of time—do not constitute a "pattern of racketeering activity" "where [the] alleged RICO predicate acts are part and parcel of a single, otherwise lawful transaction . . . ." 90 F.3rd at 123. The court's refusal to apply the *H.J., Inc.*, standard is without justification, and once again—by the Fifth Circuit's own admission—exacerbates an unwarranted split in the circuits.

The approach adopted by the Fifth Circuit in this case resurrects the "multiple-scheme" approach expressly rejected in *H.J., Inc.*, by insulating RICO predicate acts where they "are part and parcel of a *single* . . . transaction." For reasons identical to those expressed by the Court in *H.J., Inc.*, the approach taken by the court of appeals is unsupported by the

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[39] Respondents do not contest that the predicate acts alleged by the Church are *related*. 90 F.3rd at 122.

text or legislative history of the statute, and injects unacceptable uncertainty and inconsistency into the application of RICO.

First, "the text of the statute and its legislative history . . . [provide] no support for the proposition espoused . . . that predicate acts of racketeering may form a pattern only when they are part of separate illegal schemes." *H.J., Inc.*, 492 U.S. at 236. On this point, the Court was unanimous. *See, id.*, at 256 (Scalia, J., with Rehnquist, C.J., O'Connor, J., and Kennedy, J., concurring in the judgment):

> [T]he Court is correct in saying that nothing in the statute supports the proposition that predicate acts constituting part of a single scheme (or single episode) can never support a cause of action under RICO.

Second, like the term "multiple scheme," "single, otherwise lawful transaction" is "'hardly a self-defining term.'" *Id.*, at 241 n. 3, *citing Barticheck v. Fidelity Union Bank/First Nat. State*, 832 F.2nd 36, 39 (3rd 1987). Whether a "single, otherwise lawful transaction" exists "is in the eye of the beholder" and "depends on the level of generality at which criminal activity is viewed." *Id.* For example, the numerous predicate acts alleged in this case might be viewed—as they are by Respondents and the court of appeals—as a single "routine newsgathering" endeavor. Or, they can be viewed as they should be and as the Church expressly alleged, as multiple schemes to defraud (App. pp. 70a-72a),[40] ongoing over a period of years (App. p. 31a, ¶B(1)), with multiple victims, *e.g.*, the bank, the data processing company, the Church, the Church's law firm, *etc. See also, e.g., Combs v. Bakker*, 886 F.2nd 673, 677-78 (4th Cir. 1989), *rev'g*, 692 F.Supp. 596, 601 (W.D. N.C. 1988) where the district court had improperly dismissed plaintiffs' RICO claims for failure to allege a "pattern" because the district court viewed Jim Bakker's PTL "lifetime partnership" fraud, with 55,000 alleged victims, as "a single basic injury." In short, the "single, otherwise lawful transaction" approach once again introduces into RICO law a "'new and perhaps more

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[40]Ironically, the Church's complaint would have survived even the restrictive "multiple schemes" standard rejected in *H.J., Inc.*

amorphous concept into the analysis' that has no basis in text or legislative history." *H.J., Inc.*, 492 U.S. 241, n. 3.

Equally amorphous and inconsistent with prior decisions of this Court is the court of appeals' conception of an "*otherwise lawful*" single transaction. RICO plainly applies to both legitimate and illegitimate "enterprises." *United States v. Turkette*, *supra*. If that is so—as it must be—and if a "legitimate" enterprise conducts its affairs, as here, through a "series of related predicates extending over a substantial period of time" or that "by [their] nature [project] into the future with a threat of repetition," by what stroke of statutory interpretation do those predicate acts fail to establish a RICO "pattern" simply because the *object* of the RICO activity *could have been* otherwise accomplished by *legal* means?[41] In simple terms, under the Fifth Circuit's "single, otherwise lawful" standard, the ends justify the means. Yet, depending "on the level of generality at which criminal activity is

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[41]Here the Church alleged both a closed-ended and open-ended pattern. The Church properly pleaded a closed period of conduct from at least May, 1991, until June, 1993-a period of slightly over two years. *See, e.g., United States v. Nabors*, 45 F.3rd 238, 241 (8th Cir. 1995) (7-month period sufficient); *Cox v. Admin. United States Steel & Carnegie*, 17 F.3rd 1386, 1398 (11th Cir. 1994) (16 months) *cert. denied*, 130 L.Ed.2nd 784 (1995); *United States v. Pelullo*, 964 F.2nd 193, 210 (3rd Cir. 1992) (19 months); *United States v. Stodola*, 953 F.2nd 266, 270 (7th Cir.) (20 months), *cert. denied*, 121 L.Ed.2nd 63 (1992); *Swistock v. Jones*, 884 F.2nd 755, 759 (3rd Cir. 1989) (14 months may be sufficient). The Church also pleaded an open period demonstrating a threat of future criminal activity. *See, e.g., Shields Enterprises, Inc. v. First Chicago Corp.*, 975 F.2nd 1290 (7th Cir. 1992); *Ticor Title Ins. Co. v. Florida*, 937 F.2nd 447 (9th Cir. 1991); *United States v. Busacca*, 936 F.2nd 232 (6th Cir.), *cert. denied*, 502 U.S. 985 (1991). The threat of future criminal activity was demonstrated not only by the ABC Respondents' admission that their conduct was their "routine" method of "newsgathering," *see H.J., Inc.*, 492 U.S. at 243 ("continuity" is satisfied by showing that predicates are regular way of conducting defendant's ongoing legitimate business), but also evidenced by Anthony's persistent, long-standing "crusade" against the Church, and the willingness of Respondents to engage in obstruction of justice (filing false affidavits; *see* App. pp. 74a, 79a-82a, 127a-128a, 164a-166a, and 195a-196a) in order to conceal their racketeering activity long after the final *PrimeTime Live* broadcast. *See Tabas v. Tabas*, 47 F.3rd 1280, 1296 (3rd Cir.) (*en banc*, plurality opinion; continuing threat shown by defendants' continuing their regular business practices even after suit was filed), *cert. denied*, 132 L.Ed.2nd 275 (1995).

viewed," virtually *any* "legitimate enterprise" could characterize the goal of its racketeering activity as "otherwise lawful." Were not the predicate acts in *H.J., Inc., supra* committed to achieve the "otherwise lawful" purpose of obtaining a favorable public utility rate from the public utility commission? Likewise, could not the fraudulent, inflated invoices submitted in *Sedima, supra* be characterized as "part and parcel" of the "single, otherwise lawful" joint venture into which the parties had entered?

B. The Church's Complaint Would Have Been Upheld in Other Circuits Properly Applying *H.J., Inc.*

The court of appeals openly conceded Fifth Circuit "pattern" cases "are consistently different" from cases in other circuits and the Church's lawsuit would likely have been allowed to proceed under the law of other circuits. 90 F.3rd at 123, *citing, Shields Enterprises, Inc. v. First Chicago Corp., supra*; *Ticor Title Ins. Co. v. Florida, supra*; *United States v. Busacca, supra*; *Ikuno v. Yip*, 912 F.2nd 306 (9th Cir. 1990). The concessions are warranted. The inequality of result is not.

The Court's primary goal in *H.J., Inc.*, was to define a uniform national "pattern" approach and minimize, if not eliminate, precisely this sort of inconsistency. The court of appeals' substitution of its own standard for that of this Court defeats that laudatory objective. "[C]larity and predictability in RICO's civil applications are particularly important"[42] and the sufficiency of a plaintiff's RICO allegations should not depend on the circuit in which the lawsuit is filed. Nor is the desirability for a shorthand, supposedly easy-to-apply, test justification for refusing to apply the careful case-by-case factual evaluation required by *H.J., Inc.*[43]

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[42]*H.J., Inc.*, 492 U.S. at 255 (Scalia, J., with Rehnquist, C.J., O'Connor, J., and Kennedy, J., concurring in the judgment).

[43]It is particularly inappropriate to make sweeping "pattern" determinations, as was done here, on a motion to dismiss because such determinations depend on the specific facts *proved* in each case. *E.g., H.J., Inc.*, 492 U.S. at 242; ***footnote continued on next page . . . .***

CONCLUSIONS

Both of the questions presented in this case are important ones that need resolution. Both questions arise in a procedural context in which there are no factual issues to be resolved, only sharply defined legal ones. Both questions were answered by the court of appeals in a manner that conflicts with the law in the other circuits.

The scope of §1985(3)-at least concerning its protection of religious groups—is an important national question that should not be left open to doubt. The court of appeals' wholly unexplained refusal to apply §1985(3) to religiously-based conspiracies creates a conflict in the circuits that should not be allowed to stand.

Concerning the RICO question, the Court granted *certiorari* in *H.J., Inc.*, precisely to *resolve* conflicting interpretations by the courts of appeals of RICO's "pattern of racketeering activity" requirement and establish a single "meaningful concept of 'pattern' within the existing statutory framework . . . ." 492 U.S. at 236. The test there established by the Court is neither "arcane" nor cryptic. The decision of the court of appeals to adopt its own inconsistent standard represents a step backwards in RICO law, once again creating conflicting interpretations of the statute, and uncertainty and unequal treatment for RICO plaintiffs and defendants alike.

For all of these reasons, the writ should be granted.

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footnote continued from previous page . . . .

Diamonds Plus, Inc. v. Kolber, 960 F.2nd 765, 769 (8th Cir. 1992) ("Ultimately, the existence of a pattern is a question of fact."). At the pleadings stage—even in a RICO case—general allegations are sufficient. *National Organization for Women, Inc. v. Scheidler*, 127 L.Ed.2nd at 107 (general allegations of "injury" from RICO violation sufficient, *quoting Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992)). *See also Howell Petroleum Co. v. Weaver*, 776 F.2nd 1302, 1303 (5th Cir. 1985) (general allegations sufficient to satisfy RICO), *reh'g denied*, 780 F.2nd 1198, 1199 (5th Cir. 1986) (all elements of RICO must be pleaded, but plaintiff need only do so in accordance with liberal notice-pleading procedure of *Fed. R. Civ. P.*).

Respectfully Submitted,

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